

AMENDED IN ASSEMBLY APRIL 14, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1268

Introduced by Assembly Member Kuehl

February 26, 1999

An act to amend Sections 51.7 and 52 of the Civil Code, and to add Chapter 10 (commencing with Section 1138) to Part 3 of Division 2 of the Labor Code, relating to labor disputes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1268, as amended, Kuehl. Labor disputes.

Existing law provides that all persons in this state have the right to be free from any violence, or intimidation by threat of violence, for various reasons including a position in a labor dispute; but that law specifies that it does not apply to statements concerning positions in a labor dispute that are made during otherwise lawful labor picketing.

This bill would, instead, ~~specify that it does not apply to statements concerning positions in a labor dispute that are made in the context of the labor dispute~~ *delete all reference to labor disputes in that provision.*

Existing law authorizes the award of exemplary damages and a \$25,000 civil penalty to a person denied the above rights.

This bill would limit the award of exemplary damages to instances of fraud, malice, or oppression.

Existing federal law, the Norris-LaGuardia Act, among other things, limits the liability of labor unions, or officers or members thereof, for the unlawful acts of individual members

except upon clear proof of actual participation in, or actual authorization or ratification of, those unlawful acts. That law also limits the authority of a court to issue a temporary or permanent injunction in a labor dispute except upon a hearing establishing specified facts and upon the filing of an undertaking, the amount thereof to be set by the court, with the undertaking to have a specified legal effect; and restricts the right to a restraining order or injunctive relief in a labor dispute, as specified.

This bill would enact similar provisions under state law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 51.7 of the Civil Code is
2 amended to read:

3 51.7. (a) All persons within the jurisdiction of this
4 state have the right to be free from any violence, or
5 intimidation by threat of violence, committed against
6 their persons or property because of their race, color,
7 religion, ancestry, national origin, political affiliation, sex,
8 sexual orientation, age, ~~disability, or position in a labor~~
9 ~~dispute, or disability~~ or because another person perceives
10 them to have one or more of those characteristics. The
11 identification in this subdivision of particular bases of
12 discrimination is illustrative rather than restrictive.

13 ~~This section does not apply to statements concerning~~
14 ~~positions in a labor dispute which are made in the context~~
15 ~~of the labor dispute.~~

16 (b) As used in this section, “sexual orientation” means
17 heterosexuality, homosexuality, or bisexuality.

18 SEC. 2. Section 52 of the Civil Code is amended to
19 read:

20 52. (a) Whoever denies, aids or incites a denial, or
21 makes any discrimination or distinction contrary to
22 Section 51 or 51.5, is liable for each and every offense for
23 the actual damages, and any amount that may be
24 determined by a jury, or a court sitting without a jury, up
25 to a maximum of three times the amount of actual

1 damage but in no case less than one thousand dollars
2 (\$1,000), and any attorney's fees that may be determined
3 by the court in addition thereto, suffered by any person
4 denied the rights provided in Section 51 or 51.5.

5 (b) Whoever denies the right provided by Section
6 51.7, or aids, incites, or conspires in that denial, is liable for
7 each and every offense for the actual damages suffered by
8 any person denied that right and, in addition, the
9 following:

10 (1) An amount to be determined by a jury, or a court
11 sitting without a jury, for exemplary damages, if the
12 defendant is guilty of fraud, malice, or oppression.

13 (2) A civil penalty of twenty-five thousand dollars
14 (\$25,000) to be awarded to the person denied the right
15 provided by Section 51.7.

16 (3) Attorney's fees as may be determined by the court.

17 (c) Whenever there is reasonable cause to believe that
18 any person or group of persons is engaged in conduct of
19 resistance to the full enjoyment of any of the rights
20 hereby secured, and that conduct is of that nature and is
21 intended to deny the full exercise of the rights herein
22 described, the Attorney General, any district attorney or
23 city attorney, or any person aggrieved by the conduct
24 may bring a civil action in the appropriate court by filing
25 with it a complaint. The complaint shall contain the
26 following:

27 (1) The signature of the officer, or, in his or her
28 absence, the individual acting on behalf of the officer, or
29 the signature of the person aggrieved.

30 (2) The facts pertaining to the conduct.

31 (3) A request for preventive relief, including an
32 application for a permanent or temporary injunction,
33 restraining order, or other order against the person or
34 persons responsible for the conduct, as the complainant
35 deems necessary to insure the full enjoyment of the rights
36 herein described.

37 (d) Whenever an action has been commenced in any
38 court seeking relief from the denial of equal protection of
39 the laws under the Fourteenth Amendment to the
40 Constitution of the United States on account of race,

1 color, religion, sex, national origin, or disability, the
2 Attorney General or any district attorney or city attorney
3 for or in the name of the people of the State of California
4 may intervene in the action upon timely application if the
5 Attorney General or any district attorney or city attorney
6 certifies that the case is of general public importance. In
7 that action, the people of the State of California shall be
8 entitled to the same relief as if it had instituted the action.

9 (e) Actions under this section shall be independent of
10 any other remedies or procedures that may be available
11 to an aggrieved party.

12 (f) Any person claiming to be aggrieved by an alleged
13 unlawful practice in violation of Section 51 or 51.7 may
14 also file a verified complaint with the Department of Fair
15 Employment and Housing pursuant to Section 12948 of
16 the Government Code.

17 (g) Nothing in this section shall be construed to
18 require any construction, alteration, repair, structural or
19 otherwise, or modification of any sort whatsoever,
20 beyond that construction, alteration, repair, or
21 modification that is otherwise required by other
22 provisions of law, to any new or existing establishment,
23 facility, building, improvement, or any other structure,
24 nor shall anything in this section be construed to
25 augment, restrict, or alter in any way the authority of the
26 State Architect to require construction, alteration, repair,
27 or modifications that the State Architect otherwise
28 possesses pursuant to other laws.

29 (h) For the purposes of this section, “actual damages”
30 means special and general damages. This subdivision is
31 declaratory of existing law.

32 SEC. 3. Chapter 10 (commencing with Section 1138)
33 is added to Part 3 of Division 2 of the Labor Code, to read:

34

35 CHAPTER 10. UNLAWFUL ACTS DURING LABOR DISPUTES

36

37 1138. No officer or member of any association or
38 organization, and no association or organization,
39 participating or interested in a labor dispute, shall be held
40 responsible or liable in any court of this state for the



1 unlawful acts of individual officers, members, or agents,
2 except upon clear proof of actual participation in, or
3 actual authorization of those acts.

4 1138.1. (a) No court of this state shall have authority
5 to issue a temporary or permanent injunction in any case
6 involving or growing out of a labor dispute, except after
7 hearing the testimony of witnesses in open court, with
8 opportunity for cross-examination, in support of the
9 allegations of a complaint made under oath, and
10 testimony in opposition thereto, if offered, and except
11 after findings of fact by the court, of all of the following:

12 (1) That unlawful acts have been threatened and will
13 be committed unless restrained or have been committed
14 and will be continued unless restrained, but no injunction
15 or temporary restraining order shall be issued on account
16 of any threat or unlawful act excepting against the person
17 or persons, association, or organization making the threat
18 or committing the unlawful act or actually authorized
19 those acts.

20 (2) That substantial and irreparable injury to
21 complainant's property will follow.

22 (3) That as to each item of relief granted greater injury
23 will be inflicted upon complainant by the denial of relief
24 than will be inflicted upon defendants by the granting of
25 relief.

26 (4) That complainant has no adequate remedy at law.

27 (5) That the public officers charged with the duty to
28 protect complainant's property are unable or unwilling to
29 furnish adequate protection.

30 (b) The hearing shall be held after due and personal
31 notice thereof has been given, in the manner that the
32 court shall direct, to all known persons against whom
33 relief is sought, and also to the chief of those public
34 officials of the county and city within which the unlawful
35 acts have been threatened or committed charged with
36 the duty to protect complainant's property. However, if
37 a complainant also alleges that, unless a temporary
38 restraining order is issued without notice, a substantial
39 and irreparable injury to complainant's property will be
40 unavoidable, such a temporary restraining order may be

1 issued upon testimony under oath, sufficient, if sustained,
2 to justify the court in issuing a temporary injunction upon
3 a hearing after notice. Such a temporary restraining order
4 shall be effective for no longer than five days and shall
5 become void at the expiration of those five days. *No*
6 *temporary restraining order shall be issued unless the*
7 *judicial officer issuing the temporary restraining order*
8 *first hears oral argument from the opposing party or*
9 *opposing party's attorney, except in the instances*
10 *specified in subparagraphs (B) and (C) of paragraph (2)*
11 *of subdivision (c) of Section 527 of the Code of Civil*
12 *Procedure.* No temporary restraining order or
13 temporary injunction shall be issued except on the
14 condition that the complainant first files an undertaking
15 with adequate security in an amount to be fixed by the
16 court sufficient to recompense those enjoined for any loss,
17 expense, or damage caused by the improvident or
18 erroneous issuance of the order or injunction, including
19 all reasonable costs, together with a reasonable attorney's
20 fee, and expense of defense against the order or against
21 the granting of any injunctive relief sought in the same
22 proceeding and subsequently denied by the court.

23 (c) The undertaking shall be an agreement entered
24 into by the complainant and the surety upon which a
25 decree may be rendered in the same suit or proceeding
26 against the complainant and surety, upon a hearing to
27 assess damages of which hearing the complainant and
28 surety shall have reasonable notice, the complainant and
29 surety submitting themselves to the jurisdiction of the
30 court for that purpose. Nothing contained in this section
31 shall deprive any party having a claim or cause of action
32 under or upon such undertaking from electing to pursue
33 his or her ordinary remedy by suit at law or in equity.

34 1138.2. No restraining order or injunctive relief shall
35 be granted to any complainant *involved in the labor*
36 *dispute in question* who has failed to comply with any
37 obligation imposed by law ~~which is involved in the labor~~
38 ~~dispute in question~~, or who has failed to make every
39 reasonable effort to settle that dispute either by

1 negotiation or with the aid of any available governmental
2 machinery of mediation or voluntary arbitration.

3 1138.3. No restraining order or temporary or
4 permanent injunction shall be granted in a case involving
5 or growing out of a labor dispute, except on the basis of
6 findings of fact made and filed by the court in the record
7 of the case prior to the issuance of the restraining order
8 or injunction; and every restraining order or injunction
9 granted in a case involving or growing out of a labor
10 dispute shall include only a prohibition of the specific act
11 or acts as may be expressly complained of in the
12 complaint or petition filed in such case and as shall be
13 expressly included in ~~the~~ findings of fact made and filed
14 by the court. *The term "labor dispute" as used in this*
15 *chapter has the same meaning as set forth in clauses (i),*
16 *(ii), and (iii) of paragraph (4) of subdivision (b) of*
17 *Section 527.3 of the Code of Civil Procedure.*

